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Before the
Federal Communications Commission
Washington, D.C. 20554

JAN 5 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Regulatory)	IB Docket No. 96-111
Policies to Allow Non-U.S.-Licensed Space)	
Stations to Provide Domestic and International)	
Satellite Service in the United States)	
)	
and)	
)	
Amendment of Section 25.131 of the Commission's)	CC Docket No. 93-23
Rules and Regulations to Eliminate the)	RM-7931
Licensing Requirement for Certain International)	
Receive-Only Earth Stations)	
)	
and)	
)	
COMMUNICATIONS SATELLITE)	File No. ISP-92-007
CORPORATION)	
Request for Waiver of Section 25.131(j)(1) of the)	
Commission's Rules As It Applies to Services)	
Provided via the Intelsat K Satellite)	

PETITION FOR RECONSIDERATION OF
GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby requests reconsideration of one aspect of the Commission's decision in the above-captioned proceedings. FCC 97-399 (rel. Nov. 26, 1997), 62 Fed. Reg. 64167 (Dec. 4, 1997) (hereinafter, the "*DISCO II Order*")

Specifically, GE Americom urges the Commission to reconsider its ruling with respect to permitting Intergovernmental Satellite Organizations

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(“IGOs”) and their affiliates access to the U.S. market. For the reasons discussed below, the Commission’s decision to establish a framework for market entry for COMSAT and IGO affiliates was premature. Furthermore, the standards adopted by the Commission do not adequately address the competitive risks associated with such entry. Accordingly, GE Americom requests that the Commission revise its decision in *DISCO II* to ensure that IGO entry does not disrupt competition in the U.S. satellite services market.

BACKGROUND

In its *DISCO II Order*, the Commission adopted a framework for considering applications for the use of foreign-licensed satellite providers to serve the U.S. market. Adoption of such a framework was required with respect to members of the World Trade Organization (“WTO”) in order to implement the WTO agreement on basic telecommunications services that was scheduled to take effect January 1, 1998.

However, the Commission also ruled in *DISCO II* on the standards that would apply to applications by COMSAT to serve the U.S. domestic market and to requests by new IGO affiliates for access to the U.S. satellite services market. The Commission acted on these matters despite its acknowledgment that the U.S. has no obligations under the WTO agreement with respect to the IGOs. *See DISCO II Order* at ¶ 119.

Specifically, the Commission ruled that COMSAT would be required to waive its immunity from suit as a prerequisite to seeking access to the U.S.

domestic market using INTELSAT or Inmarsat facilities. In addition, COMSAT would be required to show that its entry would promote competition and serve the public interest. *Id.* at ¶ 14. The Commission decided that IGO affiliates licensed in WTO member countries would be treated similarly to other licensees of WTO administrations, enjoying a presumption that entry would serve the public interest. However, the Commission stated that it would consider whether any continuing ties between the IGO and its affiliate could affect competition. *Id.*

DISCUSSION

The Commission erred in adopting policies with respect to entry by COMSAT and other IGO affiliates in this proceeding. Instead, the Commission should have deferred action and tied any future changes in the rules for COMSAT and IGO affiliate entry to changes in competitive conditions with respect to those entities. Furthermore, the policies that the Commission adopted do not achieve its stated goal of ensuring that COMSAT and IGO affiliates cannot take advantage of the competitive benefits enjoyed by the IGOs. The Commission should revise its decision to correct these deficiencies.

I. THE COMMISSION'S ACTION WITH RESPECT TO MARKET ENTRY BY COMSAT AND IGO AFFILIATES WAS PREMATURE

As an initial matter, the Commission acted prematurely in establishing standards for considering applications by COMSAT and IGO affiliates to access the U.S. market. The Commission need not and should not have addressed issues relating to COMSAT and IGO spin-offs in this proceeding.

As noted above, the Commission itself recognized that the adoption of the WTO agreement does not require any change in U.S. policies with respect to IGO entities. The Commission stated that “because IGOs are intergovernmental treaty organizations, they do not benefit from [the WTO] Agreement, which covers only services or service suppliers of WTO Members.” *DISCO II Order* at ¶ 110. Accordingly, the Commission found, the “United States owes no market access, national treatment or MFN obligations to the IGOs.” *Id.*

Furthermore, GE Americom and other commenters in this proceeding demonstrated that there are numerous reasons not to adopt new policies with respect to the IGOs at this time. Several parties noted that market access issues relating to the IGOs require special scrutiny.¹ In addition, commenters pointed out that efforts to restructure the IGOs are pending, and the Commission cannot predict the outcome of those negotiations.² Accordingly, critical facts needed to assess the competitive issues raised by IGO restructuring are not yet known. Finally, parties argued that the Commission should not prejudge these issues given the legislation pending before Congress that addresses the U.S. interests in restructuring the IGOs and the conditions under which IGO facilities should be permitted to be used for U.S. service.³

¹ See, e.g., GE Americom Reply Comments at 6; Columbia Reply Comments at 3-4; Orion Reply Comments at 7-9; PanAmSat Reply Comments at 5-7.

² See, e.g., GE Americom Reply Comments at 6-7; Columbia Reply Comments at 2-3; Orion Reply Comments at 8.

³ See, e.g., GE Americom Comments at 7; PanAmSat Reply Comments at 6.

The Commission rejected these arguments without explanation.

DISCO II Order at ¶ 118. The Commission, which has repeatedly recognized the competitive advantages enjoyed by the IGOs, cited to no change in these factors that could possibly justify a revision of the policies regarding IGO access to the U.S. market. To the contrary, the Commission expressly acknowledged that the driving factor justifying a change in policies with respect to its satellite market policies generally -- the adoption of the WTO basic telecom agreement -- is irrelevant to the IGOs.

The record before the Commission clearly demonstrated that action on policies regarding access by COMSAT and IGO spin-offs to the U.S. market should be deferred. The Commission should reconsider its adoption of such policies, and make clear that future changes will be considered only after changes necessary to eliminate the competitive advantages and market power enjoyed by the IGOs have occurred.

II. THE STANDARDS FOR ENTRY BY COMSAT AND IGO AFFILIATES THAT WERE ADOPTED BY THE COMMISSION DO NOT ADEQUATELY ADDRESS COMPETITIVE CONCERNS

For the reasons stated above, GE Americom believes that the Commission should not adopt any changes with respect to its market entry policies for IGOs until there has been meaningful change in the IGOs' ability to distort competition. At a minimum, however, the Commission must revise its rules to better address the competitive issues raised by IGO entry. The standards adopted by the Commission in the *DISCO II Order* for addressing applications by COMSAT

and by IGO affiliates to serve the U.S. market are insufficient to achieve the Commission's stated goals of protecting competition in the U.S. satellite services market.

The Commission's test for considering COMSAT entry into the U.S. domestic market is clearly incomplete. The Commission states that "INTELSAT, Inmarsat, and COMSAT should be subject to the *same rules as their competitors* before COMSAT will be allowed to provide domestic service via INTELSAT or Inmarsat." *DISCO II Order* at ¶ 125 (emphasis in original). However, the framework adopted by the Commission falls far short of ensuring that this will be the case.

The Commission states that as a prerequisite for applying to provide domestic service, COMSAT must waive the immunity from suit it enjoys as a signatory to INTELSAT and Inmarsat. *Id.* at ¶ 126. GE Americom agrees that this is a critical step. However, the Commission fails to address the numerous other competitive advantages COMSAT enjoys as an IGO signatory.

First, although the Commission acknowledges that the IGOs themselves have their own immunities from suit, *id.* at ¶ 125, it does not require that those immunities be waived before COMSAT can apply to provide U.S. service using IGO facilities. The Commission cannot adequately protect competition if COMSAT waives its immunity but INTELSAT remains immune from suit for any anti-competitive behavior.

Similarly, the Commission ignores the fact that INTELSAT enjoys preferential access to orbital locations. Nor does the Commission address the risk of cross-subsidization of rates by COMSAT or the IGOs. Until all these factors have changed, private satellite providers simply cannot compete on a level playing field with COMSAT. The Commission must make clear that COMSAT entry into the domestic U.S. market will not be permitted as long as COMSAT and the IGOs retain these advantages.

The test adopted by the Commission for entry by IGO spin-offs is also inadequate. The Commission states that it will consider the degree of affiliation between the spin-off and the IGO in considering whether entry by an IGO entity will harm competition. *DISCO II Order* at ¶ 136. The Commission also states that it will take into account views expressed by the Executive Branch on this issue. *Id.* at ¶ 137.

However, as the Commission recognizes, the creation of any IGO spin-offs will be the result of negotiations among the IGO members. *Id.* There is certainly no guarantee that the outcome of these negotiations will be consistent with the interests of competition. The Commission must retain the flexibility to reject entry by a new IGO spin-off if necessary to protect competition in the U.S. market.

GE Americom continues to believe that the optimum approach to IGO entry is the adoption of specific requirements for IGO restructuring modeled on the terms of the legislation pending before Congress (H.R. 1872 and S. 1328). These

bills provide a clear framework for ensuring that entry by COMSAT and other IGO entities does not distort competition in the U.S. satellite services market.

CONCLUSION

The Commission's decision to adopt a framework to consider entry by COMSAT and other IGO entities into the U.S. satellite market was not mandated by the WTO Agreement and not justified by any changes in the IGOs' ability to harm competition in the U.S. Accordingly, the Commission should revoke that framework. At a minimum, the Commission must revise its rules to ensure that entry by COMSAT or other IGOs does not harm competition. GE Americom urges the Commission to model its rules in this area on the legislation being considered by Congress.

Respectfully submitted,

GE AMERICAN COMMUNICATIONS, INC.

Philip V. Otero
Senior Vice President and
General Counsel
GE American Communications, Inc.
Four Research Way
Princeton, NJ 08540

By: 

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

January 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for
Reconsideration of GE American Communications, Inc. was served by hand delivery
this 5th day of January, 1998 to:

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Regina Keeney
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 830
Washington, D.C. 20554

Fern Jarmulnek
Chief, Satellite Policy Branch
Satellite and Radiocommunications
Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 518
Washington, D.C. 20554

Lori Sherman
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 839
Washington, D.C. 20554

Linda L. Haller
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 580
Washington, D.C. 20554


Kathy Bates